

ADDENDUM TO THE  
INITIAL STATEMENT OF REASONS

*Note that only sections modified are included in this addendum. These regulations were noticed on March 9, 2018, and a public hearing held on April 23, 2018. Testimony was received during the 45-day comment period ending at 5:00 p.m., April 23, 2018. The California Department of Social Services (Department) considered the testimony and changes have been made to the proposed regulations as follows:*

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

The Department has found these regulations neither inconsistent or incompatible with existing regulations because research was done by program to determine that these are non-duplicating and non-repetitive regulations, and do not negate or overlap other existing regulation or law. Further, these regulations are not duplicative of any federal law.

Section 130003(b)(1)

Specific Purpose:

This section is adopted for clarity to include a definition of the term "Bona-fide Offer."

Factual Basis:

This section is adopted and is necessary to provide a definition of what qualifies as a "bona-fide offer" between the buyer and the seller of a Home Care Organization, as authorized by Section 1796.63(a) of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is deleting this section because the term "bona-fide offer" is not used anywhere in the regulations.**

### Section 130003(r)(1)

#### Specific Purpose:

This section is adopted for clarity to include a definition of the term "Registration Number."

#### Factual Basis:

This section is adopted and is necessary to provide a definition of the Department's personnel identification number (PER ID), which is a unique identifier for a Registered Home Care Aide, as authorized by Section 1796.63(a) of the Health and Safety Code.

#### Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to this section to fix a typographical error.**

**The Department is changing the word "Personal" to "Personnel" to reflect the correct term that is used when referring to an individual's identification number with the Department. No other changes are being made to this section.**

### Section 130004(a)

#### Specific Purpose:

This section is adopted to specify the forms furnished by the Department to be used by Home Care Organization applicants, Home Care Organization licensees, Home Care Aide applicants, Registered Home Care Aides, Home Care Aide renewal applicants, and Home Care Organization employees and volunteers.

#### Factual Basis:

This section is adopted to specify, and incorporate by reference, in their entirety, forms furnished by the Department for the purposes of licensing and registration. The forms are not printed in the California Code of Regulations because it would be cumbersome and impractical. The forms listed in this section at Sections 130004(a)(1) through (a)(16) are available to the public at:

Link to HCS Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/E-H>

Link to LIC Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/I-L>

Link to SOC Forms: <http://www.cdss.ca.gov/inforesources/Forms-Brochures/Forms-Alphabetic-List/Q-T>:

**Modification:**

**The Department is correcting a reference from Chapter 13 to the correct Chapter 1 by striking the "3."**

Section 130004(a)(1)

**Specific Purpose:**

This section is adopted to specify that suboffice requests must be submitted on form HCS 001 (12/15) – Home Care Organization Suboffice Request. The detailed elements purpose may be found starting at Subdivision (d)(1) of Section 130030.

**Factual Basis:**

This section is adopted and is necessary to identify the specific form a Home Care Organization applicant or licensee must use for the purpose of requesting a Home Care Organization suboffice.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to this section to update forms furnished by the Department.**

**The Department is updating the revision date for this form to "(08/18)" from "(12/15)." The new revision is modified to match the regulations at Subdivision (d)(1) of Section 130030 and as noted here:**

- 1) Amended the first paragraph to remove the reference to written directives and updated with the correct regulatory references for the suboffice definition and administrative responsibilities. Also, updated to refer to page three from page two.**
- 2) From Request Type section, repealed "Renewal" and "Change of Ownership" options. There is no renewal process for suboffices, and a suboffice does not automatically transfer with a change of ownership. The new owner must request and get approved any suboffice(s).**
- 3) Technical changes were made to adopt the word "street" in the HCO address field, and the additional words "Designee Name(s)" and "Designee(s) Title" with outline numbering for the Suboffice Designee section C. Also, made a grammatical correction in the Section C instructions on page three.**

- 4) Updated Sections D.2.a. and b. to be consistent with regulations text. And, amended the instructions on page three to be consistent with this change.
- 5) The formatting of the form is updated to accessibility standards that resulted in the form going from a 2-page document to a 3-page document. The page numbers at the bottom are amended to reflect a 3-page document.

**Section 130004(a)(2) Renumbered to Section 130004(a)(3)**

**Specific Purpose:**

This section is adopted to specify that a Registered Home Care Aide's registration renewal must be submitted on form HCS 101 (10/17) – Home Care Aide Registration Renewal if the Registered Home Care Aide chooses to renew manually and not online. The detailed elements purpose may be found starting at Subdivision (b) of Section 130210.

**Factual Basis:**

This section is adopted and is necessary to identify the specific form a Registered Home Care Aide must use for the purposes of requesting a Home Care Aide registration renewal if the individual does not renew his or her registration online.

**Modification:**

**This section is renumbered to Section 130004(a)(3) from Section 130004(a)(2) to place the forms in alphanumeric order. Further, following the public hearing on April 23, 2018, the Department is making a change to this section to update forms furnished by the Department. No other changes are being made to this section.**

**Section 130004(a)(3) Renumbered to Section 130004(a)(2)**

**Specific Purpose:**

This section is adopted to specify that a Home Care Aide's registration application must be submitted on form HCS 100 (12/15) – Application for Home Care Aide Registration if the individual does not apply online. The detailed elements purpose may be found starting at Subdivision (b)(1) of Section 130081.

**Factual Basis:**

This section is adopted and is necessary to identify the specific form a Home Care Aide applicant must use for the purposes of requesting a Home Care Aide Registration if the individual does not apply online.

**Modification:**

This section is renumbered to Section 130004(a)(2) from Section 130004(a)(3) to place the forms in alphanumeric order. Further, following the public hearing on April 23, 2018, the Department is making a change to this section to update forms furnished by the Department.

The Department is updating the revision date for this form to "(01/18)" from "(12/15)." The form was amended to:

be an accessible document;  
change the application fee from \$25 to \$35;  
correct grammatical errors and eliminate unnecessary check boxes;  
added a paragraph detailing circumstances for ineligibility, that if the applicant continues and any of the listed circumstances exist, then the application will be withdrawn and the fee will be forfeited;  
make technical changes to form fields for clarity;  
remove Transfer Process because it is now done automatically by TrustLine and deleted from the Instructions, page 2; and,  
remove Home Care Organization Affiliation information, including from the Instructions, page 2.

No other changes are being made to this section.

**Section 130004(a)(10)**

**Specific Purpose:**

This section is adopted to specify that a Home Care Organization licensee must submit a current roster of all designees, employees, staff members, volunteers, and Affiliated Home Care Aides on form HCS 600 (03/18) – Home Care Organization Personnel Report. The detailed elements purpose may be found starting at Subdivision (c)(2) of Section 130200. This form is replacing LIC 500 as originally adopted because it is specific to the Home Care Program needs. The adoption of this form in alphanumeric order makes it necessary to renumber the outline of Section 130004(a).

**Factual Basis:**

This section is adopted and is necessary to identify the specific form that a Home Care Organization applicant or licensee must use for the purpose of submitting a current roster to the Department.

#### Section 130004(a)(10) Renumbered to Section 130004(a)(11)

##### Specific Purpose:

This section is adopted to specify that a Home Care Organization's signed statement by each member or prospective member of its board of directors acknowledging that he or she understands his or her legal duties and obligations must be submitted on form HCS 9165 (08/15) – Board of Director Statement. The detailed elements purpose may be found starting at Subdivision (c)(5) of Section 130021.

##### Factual Basis:

This section is adopted and is necessary to identify the specific form that the Home Care Organization's board of directors must use for the purpose of acknowledging his or her legal duties and obligations.

##### Modification:

**This section is renumbered to Section 130004(a)(11) from Section 130004(a)(10) to add form HCS 600 in alphanumeric order. Further, following the public hearing on April 23, 2018, the Department is making a change to this section to update forms furnished by the Department.**

**The Department is updating the revision date for this form to "(01/18)" from "(08/15)." The declaration statement was changed to ensure respondent has received a copy and read the regulations at California Code of Regulations Title 22, Division 15, Chapter 1 and eliminated the reference to the "written directives." Further, the form was made to be an accessible document. No other changes are being made to this section.**

#### Section 130004(a)(11) Renumbered to Section 130004(a)(12)

##### Specific Purpose:

This section is adopted to specify that a Home Care Organization applicant, licensee, designee, employee, staff member, volunteer, Registered Home Care Aide, or Home Care Aide applicant who require a criminal record exemption must use form LIC 301E (07/03) – Reference Request for submitting references as part of a criminal record exemption request. The detailed elements purpose may be found starting at Subdivision (d)(6)(A) of Section 130110.

Factual Basis:

This section is adopted and is necessary to identify the specific form that a Home Care Organization applicant, licensee, staff member, employee, volunteer, Home Care Aide, or Home Care Aide applicant must use for the purpose of submitting a personal reference as part of a criminal record exemption request.

Modification:

**This section is renumbered to Section 130004(a)(12) from Section 130004(a)(11) to add form HCS 600 in alphanumeric order. Further, following the public hearing on April 23, 2018, the Department is making a change to this section to update forms furnished by the Department. No other changes are being made to this section.**

Section 130004(a)(12)

Specific Purpose:

This section is adopted to specify that a Home Care Organization licensee must submit a current roster of all designees, employees, staff members, volunteers, and Affiliated Home Care Aides on form LIC 500 (11/03) – Personnel Report. The detailed elements purpose may be found starting at Subdivision (c)(2) of Section 130200.

Factual Basis:

This section is adopted and is necessary to identify the specific form that a Home Care Organization applicant or licensee must use for the purpose of submitting a current roster to the Department.

Modification:

**Following the public hearing on April 23, 2018, the Department is making changes to this section to update forms furnished by the Department.**

**The Department is deleting form LIC 500 – Personnel Report from these regulations because the HCS 600 – Home Care Organization Personnel Report form has replaced the LIC 500 form.**

Sections 130006(a) through (a)(1), and (b) through (b)(2)

Specific Purpose:

These sections are adopted to specify that if the Department determines that unlicensed home care services are being arranged, the Department will issue a

Notice of Operation in Violation of Law to the individual or entity, and the individual or entity must immediately cease arranging unlicensed home care services or apply for a license as specified in Section 130021.

Factual Basis:

These sections are adopted and are necessary to specify the actions and procedures the Department will take when unlicensed home care services are being arranged, as authorized by Sections 1796.35 and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making changes to Sections 130006(b)(1) and 130006(b)(2) for clarity purposes.**

**The Department is deleting the word "arranging" from Section 130006(b)(1) and is adding the words "and obtain" after the term "Apply for" in Section 130006(b)(2). These changes are necessary in order to make the regulation language consistent with existing Department practices and policies and to clarify that all unlicensed home care services must cease, and an unlicensed entity is required to not only apply for, but also obtain, a license in order to continue arranging home care services. These sections will now read: "(1) *Immediately cease unlicensed home care services; or (2) Apply for and obtain a license as set forth in 130021.*"**

Section 130009(b)

Specific Purpose:

This section is adopted to clarify that upon the event of a Home Care Organization licensee's death, written notification of the date of death and status of the Home Care Organization must be provided to the Department within two (2) days. If a new owner is identified, this change in ownership must comply with Subdivision (a)(1) of Section 130022.

Factual Basis:

This section is adopted and is necessary to specify the sale of property and business requirements as authorized by Sections 1796.55 and 1796.63 of the Health and Safety Code.



**Modification:**

**Following the public hearing on April 23, 2018, the Department is deleting this section because the regulation extended beyond the Department's jurisdiction.**

Section 130025(b)(2) and (b)(2)(A)

**Specific Purpose:**

This section is adopted to specify that upon completion of the orientation, an assessment will be administered to the Home Care Organization applicant or licensee and must be successfully completed within thirty (30) calendar days from the date of completion of the orientation or the fee will be forfeited and the application may be denied.

**Factual Basis:**

This section is adopted and is necessary to specify the application orientation process as authorized by Sections 1796.37, 1796.44, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130025(b)(2)(A) to fix a typographical error.**

**The Department is replacing the third "of" with "or" in Section 130025(b)(2)(A). No other changes are being made to these section.**

Section 130027(b)

**Specific Purpose:**

This section is adopted to specify that the Department has the authority to approve a waiver for a Home Care Organization-wide need or circumstance or an exception for a client, Home Care Aide, or staff need or circumstance.

**Factual Basis:**

This section is adopted and is necessary to specify the waivers and exceptions requirements as authorized by Sections 1796.51 and 1796.63 of the Health and Safety Code.

**Modification:**

Following the public hearing on April 23, 2018, the Department is making changes to this section for clarity purposes and to fix grammatical issues.

The Department is amending this section to read: "*The Department shall have the authority to approve a waiver for a Home Care Organization-wide need or an exception for a client, Home Care Aide, or staff need, if the use of alternate concepts, programs, services, procedures, techniques, or personnel qualifications meets the following circumstances.*" These changes are necessary to clarify the meaning of this regulation.

Section 130030(b)

Specific Purpose:

This section is adopted to specify that a suboffice cannot have full time staff present for more than twenty-four (24) hours within a seven-day period.

Factual Basis:

This section is adopted and is necessary to specify suboffice requirements as authorized by Sections 1796.42, 1796.51, 1796.52, 1796.53, and 1796.63 of the Health and Safety Code.

**Modification:**

Following the public hearing on April 23, 2018, the Department is making a change to this section for clarity purposes.

The Department is amending this section to read: "*A suboffice shall not operate more than 24 hours in a seven-day period.*" This change is necessary to clarify that this regulation applies to the number of hours in a week that a Health Care Organization (HCO) may operate a suboffice, and not to the time-base of staff employed by the HCO.

Section 130030(d)(1) through (d)(1)(H); and (d)(1)(I)

Specific Purpose:

These sections are adopted to specify the information required to be included on the Home Care Organization Suboffice Request (HCS 001) form furnished by the Department.

Factual Basis:

These sections are adopted and is necessary to specify suboffice requirements as authorized by Sections 1796.42, 1796.51, 1796.52, 1796.53, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making changes to Section 130030(d)(1)(H) for clarity purposes and adding Section 130030(d)(1)(I).**

**The Department is amending Section 130030(d)(1)(H) to read: *"How the Home Care Organization will ensure the suboffice is not operating more than 24 hours in a seven-day period and that no records for clients or Home Care Aides are stored at the suboffice."* These changes are necessary in order to make this section consistent with subsections (b) and (c).**

**The Department is adopting Section 130030(d)(1)(I) because it is necessary to capture the Home Care Organization licensee's signature, date, and county where the form HCS 001 was signed to appropriately demonstrate the application for a suboffice.**

Section 130042(e)

Specific Purpose:

This section is adopted to specify that the Department may institute or continue a disciplinary proceeding against any individual listed in Subdivision (a) of Section 130042, upon any ground provided by this section notwithstanding any withdrawal of Home Care Organization application, withdrawal of registry application, resignation, withdrawal of employment application, change of duties, discharge, failure to hire, or reassignment of an excluded person by the licensee or that the excluded person no longer has contact with clients at the Home Care Organization.

Factual Basis:

This section is adopted and is necessary to specify the exclusion process as authorized by Sections 1522, 1558, 1796.38, 1796.40, 1796.41, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to this section to fix a typographical error.**

**The Department is changing the word "perspective" to "prospective." No other changes are being made to this section.**

Section 130048(b)

Specific Purpose:

This section is adopted to specify that if a Home Care Organization and/or suboffice is not open to the public more than eight (8) consecutive hours per month Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., then the Home Care Organization and suboffice(s) must be available for inspection or investigation by the Department within two (2) hours' notice Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m.

Factual Basis:

This section is adopted and is necessary to specify the Department's inspection and investigation authority as authorized by Sections 1796.52, 1796.55, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to this section for clarity purposes.**

**The Department is removing the words "to the public" from this section in order to clarify that a suboffice is not a public office.**

Sections 130054(a), and (a)(1) through (a)(3)

Specific Purpose:

These sections are adopted to specify when a civil penalty of nine hundred dollars (\$900) per day will be assessed for operation of an unlicensed Home Care Organization, including: failure to submit a complete application and continuing to operate after receiving a Notice of Operation in Violation of Law; continued unlicensed operation after denial of the application; or continued unlicensed operation after expiration of a conditional license.

Factual Basis:

These sections are adopted and are necessary to specify the process for unlicensed civil penalties as authorized by Sections 1796.35, 1796.47, 1796.55, and 1796.63 of the Health and Safety Code.

**Modification:**

Following the public hearing on April 23, 2018, the Department is making changes to Sections 130054(a) and 130054(a)(1) to fix a grammatical error and for clarity purposes.

The Department is replacing the word "either" with the word "any" in Section 130054(a). This change is necessary because there are three options listed under this section, and not just two. The Department is also amending Section 130054(a)(1) to read: "*Upon receipt of the Notice of Operation in Violation of Law, the operator fails to apply for and obtain a license and continues to operate.*" This change is necessary to clarify that an unlicensed HCO will be assessed civil penalties if it continues to operate without applying for and obtaining a license.

Sections 130062(a), and (a)(1) through (a)(1)(G)

**Specific Purpose:**

These sections are adopted to specify that a Home Care Organization applicant or licensee must report to the Department, within ten (10) working days preceding the occurrence, any changes in organization, address, phone number, organizational responsibility, or business hours, as well as updated information pertaining to board of directors, separation dates of staff, volunteers, and Affiliated Home Care Aides, and any surety bond claims paid by the Home Care Organization or surety company, with specified information required.

**Factual Basis:**

These sections are adopted and are necessary to specify the reporting requirements as authorized by Sections 1796.23, 1796.33, 1796.37, 1796.53, and 1796.63 of the Health and Safety Code.

**Modification:**

Following the public hearing on April 23, 2018, the Department is making a change to Section 130062(a)(1) for clarity purposes.

The Department is removing the word "preceding" from Section 130062(a)(1) and amending this section to read: "*The following shall be reported in writing to the Department within ten (10) working days of the occurrence.*" The Department understands that it may be problematic for HCOs to notify the Department 10 days before every incident occurs, such as when an employee separates from employment. Therefore, these changes are necessary in order to clarify that a HCO must report changes to the Department within 10 days of the occurrence, and not necessarily 10 days prior to the occurrence.

Sections 130063(a) and (a)(1)

Specific Purpose:

These sections are adopted to specify that a Home Care Organization applicant, licensee, or designee must be continuously present during business hours, and the Home Care Organization licensee must provide written authorization for a designee to perform administrative processes. Home Care Organizations that are corporations must attach board resolutions authorizing the delegation of any designees.

Factual Basis:

These sections are adopted and are necessary to specify the additional responsibilities as authorized by Sections 1796.37, 1796.52, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130063(a)(1) due to an incorrect cite reference.**

**The Department is replacing the reference to subsection "(b)" with "(a)" because (b) is incorrect. No other changes are being made to these sections.**

Sections 130066(b), and (b)(1) through (b)(13)

Specific Purpose:

These sections are adopted to specify what information must be contained in each Affiliated Home Care Aide's personnel record, on a Personnel Record (HCS 501) form furnished by the Department.

Factual Basis:

These sections are adopted and are necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making changes to Sections 130066(b), (b)(7), (b)(10), and (b)(13) for clarity purposes.**

**The Department is amending Section 130066(b) to read: "*Each Affiliated Home Care Aide's personnel record shall contain a Personnel Record (HCS 501)*"**

***form that is completed with accurate information as of the date of hire. The Personnel Record (HCS 501), furnished by the Department, shall contain the following information.*** This change is necessary to clarify that the Personnel Record (HCS 501) form is only required to be completed at the time of hire and does not need to be updated on a continuous basis.

The Department is removing the term "date(s) of employment" from Section 130066(b)(7) and replacing it with "date of birth." This change is necessary because there is no area on the Personnel Record (HCS 501) form that requests the date(s) of employment; however, the form does request date of birth.

The Department is amending Section 130066(b)(10) to read: "***Signature and date by the individual acknowledging that he or she is at least 18 years of age and that the statements made on the Personnel Record (HCS 501) form are true and correct.***" This change is being made to clarify that a signature is required to not only acknowledge the individual is at least 18 years old, but also that the statements made by the individual on the Personnel Record (HCS 501) form are true and correct.

The Department is deleting Section 130066(b)(13). This change is necessary because there is no area on the Personnel Record (HCS 501) form that requests the separation date from the HCO. Further, since this is a form that the individual completes only at the time of hire with the HCO, there would be no separation date at that point.

Sections 130066(c), and (c)(1) through (c)(7)(A)

Specific Purpose:

These sections are adopted to specify what additional documentation needs to be included in each Affiliated Home Care Aide's personnel record, including: documentation of a criminal record clearance, criminal record exemption, or transfer; all hard copy mail documents and communications received from the Department by the licensee; verification of training hours; a signed statement acknowledging the requirement to report suspected child, dependent adult, and elder abuse; all communication pertaining to the Affiliated Home Care Aide's registration; tuberculosis examination documentation; and a signed Criminal Record Statement (LIC 508) form furnished by the Department.

Factual Basis:

These sections are adopted and are necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

### **Modification:**

Following the public hearing on April 23, 2018, the Department is making a change to Section 130066(c)(4) for clarity purposes.

The Department is adding the phrase "and a signed statement acknowledging the requirement to report suspected or known child abuse" to Section 130066(c)(4). This change is necessary to clarify that an Affiliated Home Care Aide's personnel file needs to also include a statement acknowledging the Home Care Aide's (HCA's) responsibility to report suspected child abuse, in addition to adult/elder abuse. This change also makes the regulation consistent with Health and Safety Code section 1796.42(e).

Sections 130066(d), and (d)(1) through (d)(11)

### **Specific Purpose:**

These sections are adopted to specify what information must be contained in each staff and volunteer's personnel record, on a Personnel Record (HCS 501) form furnished by the Department.

### **Factual Basis:**

These sections are adopted and are necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

### **Modification:**

Following the public hearing on April 23, 2018, the Department is making changes to Sections 130066(d), (d)(5), (d)(8), and (d)(11) for clarity purposes.

The Department is amending Section 130066(d) to read: *"Each staff and volunteer's personnel record shall contain a Personnel Record (HCS 501) form that is completed with accurate information as of the date of hire. The Personnel Record (HCS 501), furnished by the Department, shall contain the following information."* This change is necessary to clarify that the Personnel Record (HCS 501) form is only required to be completed at the time of hire and does not need to be updated on a continuous basis.

The Department is removing the term "date(s) of employment" from Section 130066(d)(5) and replacing it with "date of birth." This change is necessary because there is no area on the Personnel Record (HCS 501) form that requests the date(s) of employment; however, the form does request date of birth.



The Department is amending Section 130066(d)(8) to read: "*Signature and date by the individual acknowledging that he or she is at least 18 years of age and that the statements made on the Personnel Record (HCS 501) form are true and correct.*" This change is being made to clarify that a signature is required to not only acknowledge the individual is at least 18 years old, but also that the statements made by the individual on the Personnel Record (HCS 501) form are true and correct.

The Department is deleting Section 130066(d)(11). This change is necessary because there is no area on the Personnel Record (HCS 501) form that requests the separation date from the HCO. And, since this is a form that the individual completes only at the time of hire with the HCO, there would be no separation date at that point.

Sections 130066(e), and (e)(1) through (e)(4)

Specific Purpose:

These sections are adopted to specify what additional documentation must be contained in each staff and volunteer's personnel record, including: documentation of a criminal record clearance, criminal record exemption, or transfer; all hard copy mail documents and communications received from the Department by the licensee; a signed statement acknowledging the requirement to report suspected dependent adult and elder abuse; and a signed Criminal Record Statement (LIC 508) form furnished by the Department.

Factual Basis:

These sections are adopted and are necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

Modification:

Following the public hearing on April 23, 2018, the Department is making a change to Section 130066(e)(3) for clarity purposes.

The Department is adding the phrase "and a signed statement acknowledging the requirement to report suspected or known child abuse" to Section 13066(e)(3). This change is necessary to clarify that a staff or volunteer's personnel file needs to also include a statement acknowledging the individual's responsibility to report suspected child abuse, in addition to adult/elder abuse. This change also makes the regulation consistent with Health and Safety Code section 1796.42(e).

Sections 130066(f), and (f)(1) through (f)(11)

Specific Purpose:

These sections are adopted to specify what information must be contained in each licensee's personnel record, on a Personnel Record (HCS 501) form furnished by the Department.

Factual Basis:

These sections are adopted and are necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

Modification:

Following the public hearing on April 23, 2018, the Department is making changes to Sections 130066(f), (f)(5), (f)(8), and (f)(11) for clarity purposes.

The Department is amending Section 130066(f) to read: *"Each Home Care Organization licensee's personnel record shall contain a Personnel Record (HCS 501) form that is completed with accurate information as of the time of license application. The Personnel Record (HCS 501), furnished by the Department, shall contain the following information."* This change is necessary to clarify that the Personnel Record (HCS 501) form does not need to be updated on a continuous basis.

The Department is removing the term "date(s) of employment" from Section 130066(f)(5) and replacing it with "date of birth." This change is necessary because there is no area on the Personnel Record (HCS 501) form that requests the date(s) of employment; however, the form does request date of birth.

The Department is amending Section 130066(f)(8) to read: *"Signature and date by the individual acknowledging that he or she is at least 18 years of age and that the statements made on the Personnel Record (HCS 501) form are true and correct."* This change is being made to clarify that a signature is required to not only acknowledge the individual is at least 18 years old, but also that the statements made by the individual on the Personnel Record (HCS 501) form are true and correct.

The Department is deleting Section 130066(f)(11). This change is necessary because there is no area on the Personnel Record (HCS 501) form that requests the separation date from the HCO.

Sections 130066(g), and (g)(1) through (g)(5)

Specific Purpose:

These sections are adopted to specify what additional documentation must be contained in each licensee's personnel record, including: documentation of a criminal record clearance, exemption, or transfer; all hard copy mail documents and communications received from the Department by the licensee; a signed statement acknowledging the requirement to report suspected dependent adult and elder abuse; certificate of completion of the Department's orientation; and a signed Criminal Record Statement (LIC 508) form furnished by the Department.

Factual Basis:

These sections are adopted and are necessary to specify the personnel record requirements as authorized by Sections 1796.36, 1796.44, 1796.45, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130066(g)(3) for clarity purposes.**

**The Department is adding the phrase "and a signed statement acknowledging the requirement to report suspected or known child abuse" to Section 13066(g)(3). This change is necessary to clarify that a Home Care Organization licensee's personnel file needs to also include a statement acknowledging the individual's responsibility to report suspected child abuse, in addition to adult/elder abuse. This change also makes the regulation consistent with Health and Safety Code section 1796.42(e).**

Sections 130067(b)(3) through (b)(3)(B)

Specific Purpose:

These sections are adopted to specify that an Affiliated Home Care Aide who transfers from one Home Care Organization to another will be deemed to have met the entry level training requirements if the Affiliated Home Care Aide can produce written documentation of successful completion that shows title, date completed, instructor's name and signature, and length of the training; however, the two-hour orientation training is not transferrable and must be completed at each Home Care Organization to which the Home Care Aide is affiliated.

Factual Basis:

These sections are adopted and are necessary to specify the Affiliated Home Care Aide training requirements as authorized by Sections 1796.44, 1796.47, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130067(b)(3)(A) for clarity purposes.**

**The Department is adding "and registration number" to Section 130067(b)(3)(A). This change is being made to include a unique identifier to ensure that written documentation is applied to the correct individual.**

Sections 130071(a)(7) and (a)(7)(A)

Specific Purpose:

These sections are adopted to specify that a Home Care Aide's status will display "registered-pending review" on the Home Care Aide Registry when a Registered Home Care Aide has a subsequent violent criminal history, subsequent felony conviction, administrative action under review by the Department, or has been issued an immediate exclusion order by the Department prohibiting the Registered Home Care Aide from employment pending administrative action proceedings. An individual in a "registered-pending review" status cannot provide home care services until a final determination is made.

Factual Basis:

These sections are adopted and are necessary to specify the Home Care Aide registration statuses as authorized by Sections 1796.12, 1796.19, 1796.23, 1796.24, 1796.25, 1796.26, 1796.29, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making changes to these sections to fix some typographical and grammatical errors and for clarity.**

**The Department is amending Section 130071(a)(7) by: 1) capitalizing the word "registered" for consistency; 2) removing the apostrophe from the word "Aide's" because it is grammatically incorrect; 3) adding the word "a" before the phrase "subsequent felony conviction" for grammatical purposes; and 4) replacing the word "renewal" with "review" due to a typographical error. No other changes are being made to Section 130071(a)(7).**

**The Department is also amending Section 130071(a)(7)(A) by adding the phrase "for any Home Care Organization" after home care services. This change is necessary to clarify that a HCA cannot continue to provide home care services for any HCOs while in this status.**

Sections 130082(b), and (b)(1) through (b)(2)

Specific Purpose:

These sections are adopted to specify that if a Home Care Aide applicant does not submit information as requested, the Department will cease processing the application, provided the Department has not already denied or taken action to deny the application, and the application will be considered withdrawn. The Department will provide written notice of the withdrawal to the Home Care Aide applicant and all Home Care Organization(s) to which the Home Care Aide is affiliated. The Home Care Aide applicant will need to submit a new application, including application fees, if registration is still desired.

Factual Basis:

These sections are adopted and are necessary to specify the initial application review and registration issuance process as authorized by Sections 1796.12, 1796.19, 1796.22, 1796.23, 1796.25, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130082(b)(1) to fix a typographical error.**

**The Department is adding the words "to which" after Organization. No other changes are being made to these sections.**

Sections 130092(b)(2)(A) and (B)

Specific Purpose:

These sections are adopted to specify that within thirty (30) calendar days of receipt of an appeal, the Department must serve an accusation upon the excluded person; and within sixty (60) days of receipt of a notice of defense, the Department must begin a hearing on the accusation.

Factual Basis:

These sections are adopted and are necessary to specify the exclusion process as authorized by Sections 1522, 1558, 1796.25, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130092(b)(2)(A) to fix a typographical error.**

**The Department is replacing "(3)" with "(30)." No other changes are being made to these sections.**

Sections 130092(e) and (e)(1)

**Specific Purpose:**

These sections are adopted to specify that the Department may institute or continue a disciplinary proceeding against an individual, or enter an order prohibiting any person from being a member of the board of directors, an executive director, an officer, a licensee, or from having contact with clients, prospective clients, or access to confidential client information even if the individual has withdrawn his or her Home Care Aide Registry application or employment application, has resigned, has changed duties, has been discharged, was not hired, or no longer has contact with clients of the Home Care Organization. A licensee's failure to comply with the Department's exclusion order will be grounds for disciplining the licensee.

**Factual Basis:**

These sections are adopted and are necessary to specify the exclusion process as authorized by Sections 1522, 1558, 1796.25, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130092(e) to fix a typographical error.**

**The Department is replacing the word "perspective" with "prospective." No other changes are being made to these sections.**

Sections 130092(f), and (f)(1) through (f)(4)

**Specific Purpose:**

These sections are adopted to specify that if an excluded person appeals the exclusion order and the exclusion order is upheld through the administrative hearing process, the person will be prohibited for the remainder of his or her life from: serving as a member of the board of directors, an executive director, an officer, a volunteer or a licensee of a Home Care Organization; being employed at a Home Care Organization if the person has contact with clients, prospective clients, or

confidential client information; applying to be or continuing to be a Registered Home Care Aide; or having contact with clients, prospective clients, or access to confidential client information of a Home Care Organization.

**Factual Basis:**

These sections are adopted and are necessary to specify the exclusion process as authorized by Sections 1522, 1558, 1796.25, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to this Section 130092(f)(2) to fix a typographical error.**

**The Department is adding the word "with" after the word "contact." No other changes are being made to these sections.**

**Sections 130100(c), and (c)(1) through (c)(3)**

**Specific Purpose:**

These sections are adopted to specify which individuals are exempt from the requirement to submit fingerprints and under what conditions. Nothing prevents a Home Care Organization applicant or licensee from requiring an independent criminal record clearance of any individual associated with the Home Care Organization.

**Factual Basis:**

These sections are adopted and are necessary to specify the criminal record review process as authorized by Sections 1796.23, 1796.33, 1796.37, 1796.43, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130100(c)(2)(A) for clarity purposes.**

**The Department is adding the phrase "at the Home Care Organization" after the phrase "time-limited job" in order to clarify that this regulation pertains to a repair person who is working at the Home Care Organization, and not in the client's home.**

Sections 130100(g), and (g)(1) through (g)(3)

Specific Purpose:

These sections are adopted to specify that all individuals subject to a criminal record review must request and be approved a criminal record clearance or criminal record exemption, or request and be approved a transfer of a criminal record clearance or criminal record exemption, prior to having contact with clients, prospective clients, or having access to confidential information.

Factual Basis:

These sections are adopted and are necessary to specify the criminal record review process as authorized by Sections 1796.23, 1796.33, 1796.37, 1796.43, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130100(g)(2) for clarity purposes.**

**The Department is removing the words "and be approved for" from Section 130100(g)(2) because clearance transfer requests do not need to be approved by the Department prior to the individual working or providing home care services for the new Home Care Organization. This change is consistent with statute and Department policies and practices with regard to the clearance transfer procedures.**

Sections 130100(m), and (m)(1) through (m)(3)(B)

Specific Purpose:

These sections are adopted to specify that if the Department receives information that an individual has been arrested for a specified crime(s), the Department may notify the individual that an investigation will be conducted into the facts underlying the arrest. Home Care Organization applicants and Home Care Aide applicants may not provide home care services or have access to confidential client information pending the investigation. The Department will notify the individual in writing once the investigation is completed and a determination is made. Based on the findings of the investigation, the Department may approve or deny an application, or may allow a Registered Home Care Aide to remain on the Home Care Aide Registry or revoke the registration.



Factual Basis:

These sections are adopted and are necessary to specify the criminal record review process as authorized by Sections 1796.23, 1796.33, 1796.37, 1796.43, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to this Section 130100(m) to fix a typographical error.**

**The Department is replacing the word "an" with "a." No other changes are being made to these sections.**

Sections 130110(c)(1) through (c)(3)(D); and (c)(3)(E)

Specific Purpose:

These sections are adopted to specify that the notice sent by the Department to the affected individual will include a list of the conviction(s) that the individual must address in an exemption request, as well as any other criminal record information provided to the Department by the DOJ as a result of the fingerprint submission. The notice will also specify what information must be submitted to request a criminal record exemption and that the information must be submitted to the Department within forty-five (45) days of the date of the notice. These sections also specify that individuals who submit a criminal record exemption request must cooperate with the Department in processing the request. If requested information is not submitted within forty-five (45) days, the Department may cease processing the exemption request and close the case for individuals who are staff, volunteers, or employees of the Home Care Organization, or the Department may deny the exemption request for Home Care Organization applicants or Home Care Aide applicants.

Factual Basis:

These sections are adopted and are necessary to specify the criminal record exemption process as authorized by Sections 1522, 1558, 1796.23, 1796.24, 1796.48, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making changes to Section 130110(c)(3)(D) and adopting Section 130110(c)(3)(E) as indicated below:**

**The Department is deleting all of the text from Section 130110(c)(3)(D) and adopting the same text at Section 130110(c)(3)(E) due to adopting the following text at Section 130110(c)(3)(D): *"If the individual for whom the***

***criminal record exemption is requested is a Home Care Organization licensee or a Registered Home Care Aide, and the individual does not submit the information listed in the Department's written notice within forty-five (45) days of the date of the notice, the Department shall deny the criminal record exemption."***

**The addition of language at Section 130110(c)(3)(D) is to specify the action that the Department will take for exemptions that are not requested by a licensee or registered HCA. This is necessary to further specify the criminal record exemption process as authorized by Sections 1522, 1558, 1796.23, 1796.24, 1796.48, and 1796.63 of the Health and Safety Code.**

Sections 130110(h), and (h)(1) through (h)(2)

**Specific Purpose:**

These sections are adopted to specify the Department's authority to grant a criminal record exemption that places conditions on the scope of the Home Care Organization's license, an individual's status as a Registered Home Care Aide, or the scope of employment or volunteer work in a licensed Home Care Organization. Other than maintaining the Registry, the Department will have no oversight responsibility regarding Registered Home Care Aides. These sections also specify that if a Home Care Aide applicant has been denied a criminal record exemption prior to December 1, 2016, he or she may reapply once, immediately to be registered. Thereafter, if an applicant's criminal record exemption is again denied, the applicant will be excluded for two (2) years following the exemption denial.

**Factual Basis:**

These sections are adopted and are necessary to specify the criminal record exemption process as authorized by Sections 1522, 1558, 1796.23, 1796.24, 1796.48, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making changes to Sections 130110(h) and 130110(h)(1) to fix typographical errors.**

**The Department is capitalizing the word "registered" in Section 130110(h) and adding the word "Aide" into Section 130110(h)(1). No other changes are being made to these sections.**

#### Sections 130110(o), and (o)(1) through (o)(4)

##### Specific Purpose:

These sections are adopted to specify the actions the Department will take if it denies a criminal record exemption, including denial of a Home Care Organization license or Home Care Aide registration, revocation of a Home Care Organization license or Home Care Aide registration, and/or exclusion of a licensee, Home Care Aide, staff person, volunteer, or employee from a Home Care Organization and the Home Care Aide Registry.

##### Factual Basis:

These sections are adopted and are necessary to specify the criminal record exemption process as authorized by Sections 1522, 1558, 1796.23, 1796.24, 1796.48, and 1796.63 of the Health and Safety Code.

##### Modification:

**Following the public hearing on April 23, 2018, the Department is making changes to Section 130110(o) to fix typographical errors.**

**The Department is adding the word "a" after the word "denies" and adding a comma after the word "exemption." No other changes are being made to these sections.**

#### Sections 130110(q)

##### Specific Purpose:

These sections are adopted to specify that a Home Care Organization applicant, licensee, or designee may request that a criminal record exemption for himself or herself and/or Home Care Aide applicants, Registered Home Care Aides, employees, and volunteers, be transferred to his/her Home Care Organization for an exemption that was previously issued for another Home Care Organization, a facility licensed by the Department, the TrustLine Registry, the Home Care Aide Registry, a certified family home, a resource family home, or for administrator certification. These sections also specify the documents required for requesting a criminal record exemption transfer.

##### Factual Basis:

These sections are adopted and are necessary to specify the criminal record exemption process as authorized by Sections 1522, 1558, 1796.23, 1796.24, 1796.48, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a changes to this section for clarity purposes.**

**The Department is adding "a resource family home" to the list of facilities from which an individual may transfer a prior approved criminal record exemption. This change is consistent with the statutory changes which have occurred as part of the State of California's realignment plan and have resulted in creation of new facilities licensed by the Department.**

Sections 130200(c)(2), (c)(2)(A) through (K)

**Specific Purpose:**

These sections are adopted to specify the information required to be provided on the Home Care Organization's Personnel Report (LIC 500), as part of the license renewal application.

**Factual Basis:**

These sections are adopted and are necessary to specify the Home Care Organization license renewal process as authorized by Sections 1796.37, 1796.40, 1796.55, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130200(c)(2) to correct a form number.**

**The Department is changing "LIC 500" to "HCS 600" because the HCS 600 form replaces the LIC 500 form. No other changes are being made to these sections.**

Sections 130200(d), and (d)(1) through (d)(2)

**Specific Purpose:**

These sections are adopted to specify additional supporting documents that must be submitted with a license renewal application if updates have been made since licensure, as well as the renewal application processing fee.

Factual Basis:

These sections are adopted and are necessary to specify the Home Care Organization license renewal process as authorized by Sections 1796.37, 1796.40, 1796.55, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to Section 130200(d)(2) for clarity purposes.**

**The Department is adding "The renewal fee may be paid by check, money order, or credit card" to Section 130200(d)(2) to clarify that for renewal fees, the HCO may pay with a credit card, in addition to check or money order.**

Sections 130210(a), and (a)(1) through (a)(2)

Specific Purpose:

These sections are adopted to specify that any individual seeking to renew a Home Care Aide registration must file a renewal application, either by mail or online, and must include a non-refundable application fee. If the renewal application is submitted by mail, the fee must be paid by check or money order. If the renewal application is submitted online, the fee must be paid by credit card.

Factual Basis:

These sections are adopted and are necessary to specify the registration renewal application requirements as authorized by Sections 1796.12, 1796.25, 1796.31, 1796.48, and 1796.63 of the Health and Safety Code.

Modification:

**Following the public hearing on April 23, 2018, the Department is making a change to Sections 130210(a)(1) and (a)(2) to correct a cite reference.**

**The Department is replacing "130085" with "130084" in Sections 130210(a)(1) and 130210(a)(2) because the cite reference in these sections was incorrect. No other changes are being made to these sections.**

Sections 130211(a), and (a)(1) through (a)(2)

Specific Purpose:

These sections are adopted to specify that if a Registered Home Care Aide does not submit a complete renewal application and fee before his or her registration

expiration date, the Department will cease processing the renewal application and the registration will be forfeited, unless the Department has revoked or has taken action to revoke the registration. The Department will provide written notification of the forfeiture to the individual and all Home Care Organizations to which the individual is affiliated. It will be the responsibility of the individual to submit a new application, including application fees, if registration is desired and the individual is otherwise eligible to apply.

**Factual Basis:**

These sections are adopted and are necessary to specify the renewal application review and continuance of registration requirements as authorized by Sections 1796.25, 1796.26, 1796.31, 1796.37, 1796.48, and 1796.63 of the Health and Safety Code.

**Modification:**

**Following the public hearing on April 23, 2018, the Department is making changes to Section 130211(a) for clarity purposes and to correct typographical errors.**

**The Department is replacing the word "completed" with "complete" and adding the word "renewal" to Section 130211(a) to fix these typographical errors.**

**The Department is also amending Section 130211(a) to clarify how a Home Care Aide registration may become forfeited and that the forfeiture of a registration does not relieve the Home Care Aide of the law. Section 130211(a) now reads: *"If the Registered Home Care Aide does not submit a complete renewal application and fee on or before the registration expiration date, the Department shall cease processing of the renewal application and the Home Care Aide's registration will be forfeited. A forfeited registration does not deprive the Department of its authority to institute or continue a proceeding against a Home Care Aide upon any ground provided by law."***

**b) Testimony and Response 45-Day Public Notice**

These regulations were considered as Item #1 at the public hearing held on April 23, 2018, in Sacramento, California. Written and oral testimony were received from the following during the public comment period from March 9, 2018, to 5:00p.m. April 23, 2018:

- A. Divine Home Care, Christopher Baldivid, Director of Staffing & Human Resources
- B. At-Home Senior Care Services, Jim Small, Executive Director

- C. California Association for Health Services at Home (CAHSAH), Braden Oparowski, Director of Policy, Advocacy & Public Affairs
- D. Honor Home Care Services California, Inc., Neil Raina, Counsel
- E. LivHOME, Inc., Gail Zimmerman
- F. American Board of Home Care (ABHC), Cameron Akrami, President

Additional comments were received from Phil Bongiorno, Executive Director of Home Care Association of America. However, these comments were received after the allotted 45-day public comment period and therefore were not considered for this process.

## **A. Comments from Divine Home Care**

### **1. Fact Sheet**

#### **Comment:**

We strongly disagree with the prohibitions placed on the HCAs by the Fact Sheet previously released by the Department. How can we open a discussion around this Fact Sheet that will address the gap in services between what our seniors need and what the HCAs are allowed to do? Who does the Department envision stepping in to fill this gap and meet these needs if non-medical HCAs are prohibited from such activities?

#### **Response:**

The Department appreciates this comment; however, the April 2017 Home Care Services Fact Sheet does not pertain to these emergency regulations.

### **2. Criminal Record Exemption Process**

#### **Comment:**

We would like for the Bureau to establish a separate process for Criminal Record Exemptions for Office Staff as opposed to HCAs. Generally, there is more urgency to receive clearance for an Office Staff member than an HCA. Therefore, we would like to see these applications processed with a faster turnaround.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department does not have the resources to expedite the background check process for specified individuals but will consider this in the future if resources do become available.

3. **Criminal History**

Comment:

Prior to the existence of the HCSB we were allowed to query an applicants criminal history only 7 years back and only for any records that exist in California. How is it that the Bureau has the authority to search all records from all times and in all locations, even if these records have been expunged?

Response:

The Department appreciates this comment; however, this issue does not pertain to these emergency regulations. The Department has statutory authority to obtain the full criminal history of individuals undergoing a criminal background check.

4. **Section 130001(a):**

Comment:

In accordance with California's stated desire that all business be conducted in a manner as environmentally friendly as possible, we have made a concentrated effort to "go paperless." The Bureau's requirement to maintain hard copies of all files forces us to take a step backwards. How long must these hard copies be kept?

Response:

The Department notes that Section 130001(A) as indicated in the comment is cited incorrectly and that the correct section is 130001(a). The Department appreciates this comment but is not amending the regulation at this time. The Department has determined that for health and safety reasons, certain documents need to be maintained in hard-copy format so that they are



accessible at all times. Per Section 130066(i), all records must be retained for at least three (3) years following separation of employment as an employee or Affiliated HCA or separation of association as a volunteer.

5. **Section 130021(c)(2)(B):**

Comment:

Why does the Bureau find it necessary to inquire as to the gender of an HCO applicant? What bearing on approval could this possibly have?

Response:

The Department notes that Section 130021(2)(B) as indicated in the comment is cited incorrectly and that the correct section is 130021(c)(2)(B). The Department appreciates this comment but is not amending the regulation at this time. Gender does not have a bearing on approval; however, it is a component of identification in the criminal background check process.

6. **Section 130021(c)(2)(G):**

Comment:

This is an invasion of privacy and is not relevant to an HCO application.

Response:

The Department notes that Section 130021(G) as indicated in the comment is cited incorrectly and that the correct section is 130021(c)(2)(G). The Department appreciates this comment but is not amending the regulation at this time. The Department uses this information to verify whether an applicant or licensee has a prior administrative action.

7. **Section 130021(d)(2)(A) and (B):**

Comment:

The Bureau should be the party to provide a list of duties, qualifications, responsibilities and job descriptions for HCAs. If the Bureau sets the parameters

for what an HCA can and cannot do, they should elaborate on the rest of these descriptions as well.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department requires HCOs to provide information specific to their HCA duties, qualifications and responsibilities since HCOs have different business structures, with differing job titles, job descriptions, and services provided.

8. **Section 130028:**

Comment:

The fees are too expensive. Most HCOs are small businesses struggling to maintain the financial stability of their company. This rate is outrageous! The recent increase is unwarranted except to the shortfalls of HCSBs budgeting. Even more unwarranted is the same fee for multiple locations in the same region. The Bay Area demands local presence due to the densely populated areas which creates abnormally increased traffic congestion. In order to be able to best serve our clients and HCAs it is imperative to have smaller offices throughout the areas we serve without exorbitant fees.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department collaborated with the Department of Finance for the setting of the initial fees and the fee increase that became effective on January 1, 2018. The methodology for setting the fee increase was to cover the expenses associated with the ongoing administration of the Home Care Services Program and the repayment of the general fund loan. The Department utilized a full year of data to make a determination to fully support the program and provide high quality of service. The initial year applicants exceeded original projections and the methodology for the fee increase was based on the estimated number of new applicants/renewals of Home Care Organizations and Home Care Aides with a goal of keeping fees at a rate feasible to support the program. The Department recognizes the impact any fee increase has on the industry and understands the importance of transparency.

9. **Section 130030(b):**

Comment:

We would like to request that the suboffice definition is changed, as it is too restrictive on certain items, causing unnecessary costs for secondary offices to be incurred. (b) To restrict a full-time employee is both a disservice to the company and the employee. If all other characteristics are followed, a company may still warrant a full-time employee to aid in recruitment, training and exchange of HCA personnel documents.

Response:

The Department appreciates this comment but is not amending the definition of suboffice (found in Section 130003(s)(5)) at this time. However, the Department agrees the regulation needs to be amended for clarification with regard to "full-time staff" and has therefore made the following non-substantive change to Section 130030(b) to now read: *A suboffice shall not operate more than 24 hours in a seven-day period.*

10. **Section 130063(a):**

Comment:

Some suboffices may only have one employee, which makes this nearly impossible to have the employee onsite during all business hours. This is also why we believe the definition of suboffice needs to be altered.

Response:

The Department notes that Section 130063(a) pertains to having someone present at the "HCO" during business hours, not at the suboffice. It is Section 130030 that pertains to suboffices. Therefore, it is unclear to which section this comment is directed.

The Department appreciates this comment but is not amending either regulation at this time with respect to requiring someone onsite at the HCO and/or suboffice during business hours. The Department has inspection authority over the HCO and its suboffice(s); therefore, it is necessary that someone be present at these locations during operating hours. It is a business decision on the part of the HCO

to determine how the HCO will ensure someone is present at the HCO and suboffice(s) during operating hours. The Department cannot dictate this, as HCOs may elect to handle their hours and staffing differently. The licensee can designate someone else, even multiple individuals, to ensure there is someone continuously present to represent the HCO, perform administrative processes, and to accept licensing reports from Department representatives. If there are issues with staffing these locations during business hours, then the HCO may elect to change their business hours, increase staff, or choose not to operate a suboffice.

11. **Section 130063(a):**

Comment:

This is very difficult to maintain, especially in our smaller location – our staff wear many hats, including responsibilities outside of the office. This requirement seems an inappropriate mandate required under this license.

Response:

The Department appreciates this comment but is not amending the regulation at this time. It is a requirement for either a HCO licensee or a designee to be continuously present during business hours to ensure there is an authorized representative to receive legal notices, respond to questions, and provide and receive licensing documents from the Department, including reports of inspections, consultations, accusations, and civil penalties. If a Home Care Organization is unable to meet this requirement, they may elect to modify their business hours and/or staffing.

12. **Section 130063(e):**

Comment:

We can request and even require this of our staff. However, the reality is some people move around and there is always some staff that do not update us.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department needs a current mailing address on file for each

licensee, employee, and HCA in order to maintain contact with these individuals if needed or required.

13. **Section 130071(a)(7):**

Comment:

This should be stated as "Suspended" instead of "Registered-Pending Renewal." The current wording does not make it clear that the HCA cannot work with such a status.

Response:

The Department notes that Section 130071 as indicated in the comment pertains to all registration statuses, and that the specific section pertaining to this comment is 130071(a)(7). The Department also notes that there is a grammatical error in this regulation section and has made a non-substantive change to correctly state the status as *"registered-pending review."*

The Department appreciates this comment but is not amending the regulation at this time with regard to changing the status to "suspended." The term "registered-pending review" is defined in regulations, and it makes clear that a HCA cannot work while under this status. The Department is currently in the process of putting all of the different HCA statuses onto the public registry to make this information more easily accessible and clear to anyone using the website.

14. **Section 130092:**

Comment:

It is good to see that there are consequences to bad behavior on the part of HCAs.

Response:

The Department appreciates this comment.

15. **Section 130100(c)(2)(B) and (C):**

Comment:

This paragraph states that if we were to hire a third party repair person or similar that they are not to be left alone with a client and one of our staff must be present. This seems a highly unreasonable burden on the HCO. In the event that a family member or co-habitant is already present to oversee this requirement becomes nothing more than a tax on the HCO and an unproductive use of our staff work hours.

Response:

The Department appreciates this comment and agrees that the regulation should be amended to provide clarity regarding repair persons/contractors. Because the Department has no jurisdiction over a client's residence, the Department has made a non-substantive change to Section 130100(c)(2)(A) to clarify that this regulation applies to individuals hired at the HCO, and not in the client's home. This section now reads: *The individual is hired for a defined, time-limited job at the Home Care Organization.*

16. **Section 130100(f)(1)(A)(1.):**

Comment:

If marijuana related offenses need not be disclosed, should not alcohol related offenses be treated the same way? Following this logic, anyone convicted of a DUI should be given this exact same free pass.

Response:

The Department notes that the specific regulation section pertaining to this comment is Section 130100(f)(1)(A)(1.). The Department appreciates this comment but is not amending the regulation at this time. The non-disclosure clause for marijuana-related offenses is dictated by statute and therefore is not subject to modification in these regulations.

17. **Section 130110(b):**

Comment:

Who exactly is it within the department that has been given the exact same powers as a bench-sitting judge to determine "if the affected individual has been rehabilitated and presently is of such good character" to obtain licensure? I truly hope that this is a well-qualified individual who is both accessible to the affected individuals (such as, by providing actual names of these people as opposed to analyst numbers – sometimes even multiple analyst numbers assigned to one person) and has the necessary time to interact with the affected individuals to make such a determination. I would hate to think that this power has been granted to an over-loaded, entry level government employee who is mostly concerned with processing excessive volumes of paperwork.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The basis on which an exemption determination is made, including good character, is dictated by statute and therefore is not subject to modification in these regulations.

18. **Section 130110(h)(1):**

Comment:

This seems to be a clear and obvious side-step of what should be one of the Departments primary functions. The purpose of the Home Care Services Consumer Protection Act is to promote consumer protection for elderly and disabled individuals who hire private aides to come into their homes and provide assistance with activities of daily living. How exactly does collecting data and fees accomplish this purpose? If this truly is the purpose for the existence of the HCSB then there absolutely must be processes for reporting bad-behavior on the part of anyone licensed, there must also be mechanisms in place for recording such incidents and there must also be penalties for such bad behavior. What you have done is to take responsibility that is clearly your own and attempted to assign it to law enforcement. You have done this by using language that excuses all bad behavior that falls short of breaking the law to the point of conviction. This is insufficient. The Department has found no difficulty in granting itself broad and sweeping powers, it is stunning that the one category in

which the Department could actually provide a concrete service to California Consumers, it has chosen to absent itself entirely.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The California Legislature determined the extent of the Department's authority in this area via the legislative process. The Legislature, per Section 1796.15 of the Health and Safety Code, granted the Department's only purview over HCAs to maintenance of the Home Care Aide Registry. The Department does not have the legal authority to expand the scope of its authority or its investigative or punitive powers over HCAs in regulations. Any expansion of such authority over HCAs must be made via a statutory amendment that is approved by the Legislature.

19. **Section 130110(n):**

Comment:

This is the first mention I have seen of a "simplified" and "standard" CRE process. This paragraph implies that there are two separate processes. If this is so, where is this spelled out? Who/what qualifies for one versus the other? What are the differences in the two?

Response:

The Department appreciates this comment but is not amending this regulation at this time. The standard criminal record exemption process is described in Sections 130110(a) through (l), and the simplified criminal exemption process is described in Section 130110(m) of these regulations. The criteria for a simplified criminal record exemption are specified in Sections 130110(m)(1) through (4), and clearly define what would qualify an individual for a simplified criminal record exemption. Only if all of these criteria are met can an individual be granted a simplified criminal record exemption; however, the Department has discretion in determining whether or not to grant the simplified exemption or require the individual to go through the standard exemption process if it determines that such action will help protect the health and safety of clients.



20. **Section 130110(t)(1) through (3):**

Comment:

This entire section should be removed. All that is accomplished by these items is the Department giving themselves a free pass. How could an exemption, the process that has been painstakingly detailed over the last 9 pages, ever be granted in error? Furthermore, what service or protections are provided to seniors/disabled adults by retroactively enforcing re-interpretations of existing laws? All that is accomplished by these provisions is to further punish workers for past crimes because lawmakers changed their mind as to the severity of something that has already happened, been weighed by the Department and subsequently cleared.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Although unintentional, errors may occur during the criminal record exemption process. To protect the health and safety of clients, the Department needs a mechanism to correct errors. In addition, changes to criminal and/or exemption laws are determined by the California Legislature, and the Department is bound by their determinations even if the changes occur after an exemption was previously granted.

**B. Comments from At-Home Senior Services**

1. **Section 130006(a):**

Comment:

(a) [second line] "...under *either* of the following conditions," but *three* conditions are listed. Change the word *either* to *any*, as *either* means two according most dictionaries.

Response:

The Department appreciates this comment, but notes that the commenter is either referring to written directives, which are no longer in effect, or is referring to a different section in the emergency regulations as the word "either" is not found in any part of Section 130006. Therefore, the Department cannot provide a specific response to this comment.

2. **Section 130006(b)(1):**

Comment:

(b)(1) Immediately cease *arranging* unlicensed services. What is meant by *arranging*? Does this allow already scheduled services to continue until completed, then arrange no more? This is ambiguous. What if services are scheduled M-F, 8A.M.-12 P.M. for the next 28 days? It would better to state *cease all service within 5 calendar days*, as provided for in 130022(a)(11)(B).

Response:

The Department appreciates this comment and agrees the regulation needs to be amended for clarity. Therefore, the Department has made the following non-substantive changes to Section 130006(b): *(1) Immediately cease unlicensed home care services; or (2) Apply for and obtain a license as set forth in 130021.*

3. **Section 130006(b)(1):**

Comment:

(b) (1) Immediately cease *arranging* unlicensed services; *or (2) Apply for a license as set forth in 132001.* [steps to allow for a license]. This use of "or" seems to allow for operations to continue until a license is granted.

Response:

The Department appreciates this comment and agrees the regulation needs to be amended for clarity. Therefore, the Department has made the following non-substantive changes to Section 130006(b): *(1) Immediately cease unlicensed home care services; or (2) Apply for and obtain a license as set forth in 130021.* This helps to clarify that the HCO cannot operate unless the HCO obtains a license, at which point the HCO is no longer considered unlicensed.

4. **Section 130054(a)(1):**

Comment:

Referring to 130054 UNLICENSED CIVIL PENALTIES, (a) it states penalties are applied only under three circumstances:

- failing submit an application for conditional license
- unlicensed operation continues after the denial of the application
- unlicensed operation continues after the expiration of a conditional license

Referring to 130026 CONDITIONAL LICENSE (i-) "*Civil penalties ... shall be imposed if;*" "(1) *An unlicensed HCO ...refuses to seek licensure.*" Therefore, is seems unlicensed operations can be cited but no penalties are imposed if the agency begins applying for a license (not conditional). Assembling an application packet can take a couple of weeks. Those operations can continue without penalty?

Thus, an unlicensed agency can begin operation, be detected and reported to Community Licensing, - most likely by its licensed competitors, be investigated, cited, take several weeks to complete and submit an application, and months after its unlicensed operations began become licensed, without incurring a penalty. This does not seem to be protecting the public, nor fair to licensed HCO's. Meanwhile, a licensed agency misses a TB screening or criminal clearance its receives \$100/day penalty. Both of which the unlicensed agency repeated violated.

Therefore, a fourth condition needs to be added to the conditions in 130054(a):  
*(4) Operation with a valid Home Care Organization license.*

Response:

The Department notes that the commenter recommends a fourth condition be added to include civil penalties being assessed for operation *with* a valid HCO license; however, this appears to be a typographical error since the Department would not cite for operating with a valid license. The Department appreciates this comment and agrees the regulation needs to be amended for clarity. Therefore, the Department has made the following non-substantive changes to Section 130054(a)(1) to now read: *Upon receipt of the Notice of Operation in Violation of Law, the operator fails to apply for and obtain a license and continues to operate.*

4. **Section 130027(d):**

Comment:

(d) *Within 90 calendar days ... the Department shall notify ...* . The request can remain in suspension if there is no Department reply, therefore add, *or the request is deemed approved.*

Response:

The Department notes that Section 130007(d) as indicated in the comment is cited incorrectly as it does not pertain to the specific topic above. It is presumed that the correct section is 130027(d).

The Department appreciates this comment but is not amending the regulation at this time. The regulation states that the Department will make a decision within 90 calendar days of receiving the request. Waivers and exceptions must meet the criteria set forth in regulations, and therefore cannot be approved by default.

5. **Section 130022(a)(1):**

Comment:

(a) (1) Death of a Licensee. Should add *or incapacitation*.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department cannot predict every situation where submission of a new license application would be necessary, but these regulations address some of the more common ones. By using the phrase "which are not limited to," the Department has left open the possibility for other situations that might arise, such as incapacitation, which will be addressed on a case-by-case basis.

6. **Section 130022(a)(1)(A):**

Comment:

(A) *HCO operations shall not continue until the buyer receives a HCO license or conditional license.* Immediately discontinuing operations is risky for the well being of clients, ends employment for care givers, and essentially dissolves the

HCO. It would be better to state the that *Licensee's designee may operate to HCO for up to 90 calendar days while new a licensee is established.*

Response:

The Department appreciates this comment but is not amending the regulation at this time. Section 130026(a) states that "the Department may issue a conditional license to an applicant, upon the filing of a Home Care Organization application, if the Home Care Organization applicant is in substantial compliance with applicable laws, and an urgent need for licensure exists, including but not limited to, the need to facilitate the sale of a Home Care Organization." Thus, the regulations ensure that a Home Care Organization can continue to operate under a conditional license while the sale and new license are in process.

7. **Section 130030(a):**

Comment:

(a) "...exchange of Home Care Aide personnel documents," Add - *collection and transfer of care documentation.*" as these sites can be used to collect service notes for insurance billing.

Response:

The Department appreciates this comment but is not amending the regulation at this time. It is unclear what is meant by "care documentation" and whether or not this pertains to client records. Section 130030(c) states that "records for clients and Home Care Aides shall not be stored at the suboffice." The intent of a suboffice is that it be used only for training and recruitment purposes, and the exchange of personnel documentations, but not for client records.

8. **Section 130030(b):**

Comment:

(b) "... shall not have full time staff." *"Full time staff means no more than 24 hours in a seven-day period"* This statement is unclear. Is it to mean one staff member cannot occupy the office more than 24 hours in seven days? If so, then change to read *"Shall not be occupied by any one individual more than 24 hours in a seven day period."*

Response:

The Department appreciates this comment and agrees the regulation needs to be amended for clarity. The Department has made the following non-substantive change to Section 130030(b): *A suboffice shall not operate more than 24 hours in a seven-day period.*

9. **Section 130042(b):**

Comment:

(b) "Immediate removal of an individual ..." A appeal process is then described that can take up to 90 days for a hearing, plus additional time for the decision to be made and communicated. With this time frame the State has essentially summarily terminating an employee. Few people can wait 90 days without pay to learn if they can keep their employment. There should be a show cause review with an ALJ within calendar 14 days of the notice.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The immediate exclusion process is dictated by statute, and therefore cannot be altered by regulation. There are specified protections and due process rights that the excluded individual is afforded. Health and Safety Code Section 1558 clearly specifies the timelines associated with exclusion actions.

10. **Section 130044(a):**

Comment:

(a) "...have the right to bring to the attention of the Department ...." This is ambiguous. The title of person receiving the request should be stated, insert the word *Director, or Director of Community Licensing.*

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department does not believe this regulation is ambiguous. Subsection (b) states that a review of the complaint will be conducted in accordance with Section 130056, which clearly specifies the process and who

will conduct the review. Further, a HCO can always file a written complaint to the Department in general.

11. **Section 130052(a), (d), and (g):**

Comment:

(a)(d)(g) "*A civil penalty of NN dollar per day shall be assessed for each of the following violations ...*" The starting date for the fine should be stated. Its is when the violation first occurred, or when cited? It would be best to insert the words "... from the date cited ..."

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department notes that the Civil Penalty Assessment form (HCS 421) that is provided to the HCO contains a starting date from which the civil penalty(ies) will be assessed.

12. **Section 130058(a):**

Comment:

(a) "*Any person may file a complaint ... reporting... notice of alleged violation of statutes or regulations ....*" This implies the Department will enforce other codes such as the Labor, Business and Professions, Civil, Commercial, Unemployment, etc. To avoid adjudicating customer employee complaints add the word "this Chapters's regulations and" in front of the word "statues." The sentence would then read "notice of alleged violations of this Chapter's regulations."

Response:

The Department appreciates this comment but is not amending the regulation at this time. Health and Safety Code Section 1796.11 gives the Department the authority to administer and enforce the provisions of the Home Care Services Consumer Protection Act. However, the Department only has authority within its own statute and regulations, and therefore would not enforce any other laws that are not within its jurisdiction. Should the Department receive complaints for violations of other statutes or regulations, it would not have the authority to act on or enforce them.

13. **Section 130063(a):**

Comment:

(a) "*The licensee or designee shall be continuously present ...*" Most HCO's can meet client and care giver needs from hour to hour with its administrative staff, leaving the licensee and designee free to visit clients and supervise care givers. The phrase should be changed to read "*... present with two hours notice...*"

Response:

The Department appreciates this comment but is not amending the regulation at this time. It is a requirement for either a HCO licensee or a designee to be continuously present during business hours to ensure there is an authorized representative to receive legal notices, respond to questions, and provide and receive licensing documents from the Department, including reports of inspections, consultations, accusations, and civil penalties. A designee may be any individual, and a HCO may designate multiple individuals. Only one designee is required to be present at a time. If an issue should arise at the HCO, there has to be someone available to handle the situation and to be accountable. A situation may arise that requires immediate attention and cannot wait two hours.

14. **Section 130066(b)(12):**

(b)(12) "*Employment history,*" this should express a period of time, such as past 5-7 years and not be indefinite. "*Reason for leaving*" this is a sensitive question best left for the interview. The answers are likely to be inaccurate or incomplete, especially with the 1" space provided to write. Its best to delete its requirement in the Regulations.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department requests all relevant information in order to protect the health and safety of clients. Limiting information may not protect the health and safety of clients.



15. **Section 130067(b):**

Comment:

(b) "*five (5) hours of annual training shall be completed within the first year ... AHCA hire date ....*" This is unclear. Is this the date hired with the current agency? The AHCA could change agencies every 10 to 11 months and receive no training. It would be better to say, "*by each anniversary of registration.*"

Response:

The Department appreciates this comment but is not amending the regulation at this time. Each HCO is responsible for ensuring that their HCAs receive the proper training by the anniversary of the HCA's hire date with that HCO.

16. **Section 130067(b)(3)(A):**

Comment:

(A) "... *written documentation means ... and AHCA name.*" It would be helpful to include the aide's registration number.

Response:

The Department appreciates this comment and agrees that having the HCA's registration number on written documentation of training would be beneficial. Therefore, the Department has amended Section 130067(b)(3)(A) to read: *For purposes of this section, written documentation means successful completion of training and shall include title and date of training, instructor name and signature, length of training, and the Affiliated Home Care Aide's name and registration number.*

17. **Section 130067(d)(2):**

Comment:

(d) (2) "*Written documentation shall be included with the log.*" The term written documentation presumably refers to (b)(3)(A) which also lists items that need to be included. The latter lists items that include all of the former with exception of the instructor's "*signature.*"

Including the 12 items and the instructor's signature, in a continuous log or ledger is impossible to format. Most agencies and on-line training providers provide individual certificates for each hour or block of training. What is needed is a two-year record of training. This can be done with certificates that include all this information rather than using a continuous log. A separate log can be maintained with abridged entries and no signature. The certificates with the instructors' signature validate the log's entries. This can be described in the regulation by reversing the names of the items.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The log is an internal document for licensees to use for "logging" a HCA's completed training. The log can be revised, reprinted, and/or updated as needed when the HCA completes additional training. However, the written documentation described in 130067(b)(3)(A), which includes the instructor's signature, is actual proof that the training occurred, and is needed to meet the requirements for transferring completed training hours from one HCO to another. In addition, the instructor's signature was intentionally not included in the list in subsection (d)(1) because the log does not generally have access to the trainer, and presumably can be updated with new training and new employees. The signed training document is an attachment to the training log.

18. **Section 130067(d)(1):**

Comment:

In (1) change the words "*verification log*" to "*written documentation*" and add the item "*Registry Number*".

Response:

The Department appreciate this comment but is not amending the regulation at this time. The training log and the written documentation are two different things, and therefore cannot be switched. The training log is similar to a table of contents or quick reference to the HCA's overall training, whereas the written documentation is proof that the training occurred and is an attachment to the training log.

19. **Section 130067(d)(2):**

Comment:

In (2) change the words "*written documentation*" to "*verification log*" and list the items list in (1)(A), Registry Number, (D), (G) and (H). Most agencies would be able to efficiently keep this information and print it this out as a record of that has been completed. The written documentation would be kept as a certificate for proof of training evidenced the instructor's signature. Copies of both could be given to care givers to provide other agencies.

Response:

The Department appreciate this comment but is not amending the regulation at this time. As stated above, the training log and the written documentation are two different things, and therefore cannot be switched. The training log is similar to a table of contents or quick reference to the HCA's overall training, whereas the written documentation is proof that the training occurred and is an attachment to the training log.

**C. Comments from California Association for Health Services at Home (CAHSAH)**

1. **Section 130030:**

Comment:

Section 130030 prohibits an HCO from staffing a sub-office for more than 24 hours in a seven-day period. With the growing demand for home care aides and the considerable lack of trained home care aides, its vital that an HCO can hold open recruitment for aides 7 days a week on a full-time basis in any of their approved sub-offices. The time it takes an HCO to screen home care aide applicants and process paperwork can be lengthy. If an HCO only has one staff person to complete these home care aide recruitment tasks, it is extremely burdensome to limit that staff to only 24 hours in a week.

Recommendation: Grant extended use of sub-offices for the sole purposes of home care aide recruitment, training, and retention. The extension should allow for a sub-office to be staffed for at least 30 hours in a seven-day period.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The HCO may apply for a waiver of this regulation if there is a HCO-wide need or circumstance and the HCO has an alternative means which meets the intent of this regulation. Waiver requests will be considered on a case-by-case basis.

2. **Section 130030:**

Comment:

Section 130030 prohibits records for Home Care Aides to be stored at the sub-office. However, the written directives specify that home care aide records may not be stored "permanently" at the sub-office, which we believe the original intent of the written directives was to allow an HCO to temporarily store home care aide records.

Recommendation: Clarify that the HCO is permitted to temporarily store a home care aide's records at their approved sub-offices until the HCO can follow-up and secure any necessary documentation for any potential aide or for any aide who is currently in the process of renewing their home care aide registration. The documentation would include such documents as the aide's application, criminal clearance statement, TB clearance documentation and training documentation. The HCO would then be required to transfer the home care aide's documents for permanent storage to the HCO's licensed office.

Response:

The Department appreciates this comment but is not amending the regulation at this time with regard to allowing the temporary storage of HCA records at a suboffice. The original intent was never to allow any records to be stored or left unattended at a suboffice. In order to allow records to be stored at suboffices, the Department would need to ensure the records are stored properly and available for review when needed. It becomes a financial and workload burden if the Department has to go to multiple locations to find records for review. The Department has, however, made a non-substantive change to Section 130030(d)(1)(H) by removing the word "permanently" in order to make this subsection consistent with subsection (c), as well as to clarify that no client or HCA records are to be stored at a suboffice.

3. **Section 130001:**

Comment:

Section 130001 specifies that "unless otherwise specified by the Department, the Home Care Organization shall maintain all personnel and administrative records in a hard copy format, as set forth in regulations."

Recommendation: In this age of increased computer technology, it is important to recognize the many benefits of electronic record keeping as a more effective means for handling volumes of sensitive data. It makes logical sense to allow the Bureau's surveyors the ability to pull up an HCO's electronic records verses manually going through drawers or binders of hard copies. Any documentation that would need to be printed could then be made available through hard copy. The time, cost and efficiency of electronic record keeping needs to be realized sooner rather than years from now.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department has determined that for health and safety reasons, certain documents need to be maintained in hard-copy format so that they are accessible at all times. Otherwise, the Department may need to cite the HCO for records not being available at the time of inspection and/or may need to return to the HCO for multiple visits due to the inaccessibility of records.

4. **UNIFORM TIMEFRAMES**

Comment:

There are a multiple of instances throughout the regulations that specify different timeframes which the HCO must provide notification or submit forms that range from 24 hours to 10 days. It is unclear why the timeframes need to vary slightly for each different section. Also, on page 87, Section 130092 2(A) of the regulations, it appears there is a typographical error which specifies 3 days when it should be 30 days.

Recommendation: Evaluate and expand the response timeframes to provide sufficient time for an HCO to respond and to allow for more consistency among response timeframes. Unifying the timeframes will greatly increase compliance

and efficiency. No timeframe should ever be short that five days as it takes at least five days for the Department to receive items that are sent via the USPS.

Response:

The Department appreciates this comment but is not amending the regulations at this time. Some timeframes are short because the Department perceives the issue to be an immediate risk to the health and safety of clients in care. In addition, some timeframes are determined by statute, while others are determined by reasonable standards.

The Department also notes the comment regarding Section 130092(b)(2)(A) and has made a non-substantive change to this regulation section to correct the typographical error from 3 to 30.

5. **Section 130054:**

Comment:

Section 130054 specifies that if an unlicensed agency is found to be operating without a license, said entity is required to submit an application to the Department; however, the regulation does not provide any timeframe for when the application must be submitted to the Bureau.

Recommendation: The Department needs to specify a timeframe in which to hold the unlicensed agency accountable for submitting an application for home care aide organization licensure. Given the severity of operating without a license and the risk to a consumer of home care services, it is highly recommended that the Department select a timeframe that would be in the best interest of protecting the public.

Response:

The Department appreciates this comment and agrees that the regulation should be amended to provide clarification. Therefore, the Department has made a non-substantive change to Section 130054(a)(1) to read: *Upon receipt of the Notice of Operation in Violation of Law, the operator fails to apply for and obtain a license and continues to operate.* The Department cannot dictate when an entity must submit a Home Care Organization application since they could legally choose to cease operations and not apply. However, until they apply for and

obtain a license, if they continue to operate without a license, they are still considered unlicensed and will be dealt with accordingly.

6. **Section 130065(b):**

Comment:

Section 130065(b) specifies that an HCO promptly report and keep verification of their report of any known or suspected abuse. While a HCO can phone in an abuse report, they must also follow-up their phoned report with a written report.

Recommendation: The SOC 341 is a well-known and widely used form when reporting abuse claims. We want to ensure that the SOC 341 is still a valid form that can be used for reporting purposes. Additionally, we want to ensure that documentation of a phone report to Adult Protective Services meets the requirement of prompt reporting.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The SOC 341 form is the Suspected Dependent Adult/Elder Abuse form and not the child abuse form. SOC 341 is a form that is utilized in other programs licensed by the Department. While its use with the Home Care abuse reporting requirements is not prohibited, it should be noted that the SOC 341 does not independently satisfy the reporting requirements of 130065 as it **does not** provide for all of the necessary information required by Section 130065. If an HCO elects to use SOC 341, supplemental information from the HCO will be necessary to meet the reporting requirements of 130065.

**D. Comments from Honor Home Care Services California, Inc.**

1. **Section 130001(a):**

Comment:

In an age where many businesses are trying to move to paperless systems, it would be helpful if Department Representatives were empowered to review and consider non-hard copy format materials and company information in evaluating Home Care Organization compliance.

Proposal: "Unless otherwise specified by the Department, the Home Care Organization shall maintain all personnel and administrative records in a hard copy format, as set forth in these regulations. A Department Representative conducting an Inspection pursuant to Section 130048 may consider soft copy records and any other information provided by a Home Care Organization or designee to the Department Representative.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department has determined that for health and safety reasons, certain documents need to be maintained in hard-copy format so that they are accessible at all times. Otherwise, the Department may need to cite the HCO for records not being available at the time of inspection and/or may need to return to the HCO for multiple visits due to the inaccessibility of records.

2. **Section 130003(b)(1):**

Comment:

"Bona-fide offer" - It does not appear that this term is used in the regulations.

Proposal: Eliminate.

Response:

The Department notes that Section 130001 as indicated in the comment is cited incorrectly and that the correct section is 130003(b)(1). The Department appreciates this comment and agrees that the regulation should be amended to remove the definition of "Bona-fide Offer." Therefore, the Department has made this non-substantive change to the regulation.

3. **Section 130003:**

Comment:

"Change of Control" - For purposes of Sections 130009 and 130022, it would be helpful for the Department to define what a "sale of property and business" or "change in ownership" are ideally, all references to a "sale of property and



business" would be replaced by the below proposed definition for "Change of Control."

Proposal: "Change of Control" shall mean the occurrence of any one or more of the following: (i) the accumulation, whether directly, indirectly, beneficially or of record, by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended) of greater than 50% of the shares of the outstanding Common Stock of the Company, whether by merger, consolidation, sale or other transfer of shares of Common Stock (other than a merger or consolidation where the stockholders of the Company prior to the merger or consolidation are the holders of a majority of the voting securities of the entity that survives such merger or consolidation), or (ii) a sale of all or substantially all of the assets of the Company, provided, however, that the following acquisitions shall not constitute a Change of Control for the purposes of this Agreement: (A) any acquisitions of Common Stock or securities convertible into Common Stock directly from the Company, or (B) any acquisition of Common Stock or securities convertible into Common Stock by any employee benefit plan (or related trust) sponsored by or maintained by the Company.

Response:

The Department notes that Section 130001 as indicated in the comment is cited incorrectly as definitions would fall under Section 130003. The Department appreciates this comment but is not amending the regulation at this time. This would require additional legal analysis before making such a regulation change; however, the Department may consider it in the future after conducting further research.

4. **Section 130001(s):**

Comment:

"Signature" or "signature" - An addition of a definition for the term "signature" that includes electronic and manual signatures would clarify that Home Care Organizations are allowed within the regulations to generate all compliance-related documents digitally and print them for paper records.

Proposal: "'Signature' or 'signature' means any signature, whether manual or electronic."

Response:

The Department notes that Section 130001 as indicated in the comment is cited incorrectly as definitions would fall under Section 130003. The Department appreciates this comment but is not amending the regulation at this time. The legality on allowing Home Care Organizations to submit required documents with electronic signature would require additional legal analysis. This is an idea that the Department would consider in the future after conducting further research.

5. **Section 130009:**

Comment:

See proposed definition for "Change of Control" in #3, above.

Response:

The Department appreciates this comment but is not amending the regulation at this time. This would require additional legal analysis before making such a regulation change; however, the Department may consider it in the future after conducting further research.

6. **Section 130022(a)(1):**

Comment:

This Section 130022(a) enumerates when there is a change in a licensee that requires that a new application and other required documents be filed, but the inclusion of the language "which are not limited to" is confusing.

Proposal: Remove "which are not limited to" from Section 130022(a).

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department cannot predict every situation where submission of a new license application would be necessary, but these regulations address some of the more common ones. By using the phrase "which are not limited to," the Department has left open the possibility for other situations that might arise which will be addressed on a case-by-case basis.

7. **Section 130022(a)(1):**

Comment:

Although it is clear from the context that Section 130022(a)(1) applies only in the case of a licensee that it is an individual, it would be helpful for this Section to specify that fact.

Proposal: "This Section 130022(a)(1) shall apply only to Home Care Organizations where the licensee is an individual. "

Response:

The Department appreciates this comment but is not amending the regulation at this time. This section as written could also apply to other business structures where there are multiple individuals as licensees (i.e. partnership) who become deceased at the same time.

8. **Section 130022(a)(2)(A):**

Comment:

See proposed definition of "Change of Control" in #3, above.

Response:

The Department appreciates this comment but is not amending the regulation at this time. This would require additional legal analysis before making such a regulation change; however, the Department may consider it in the future after conducting further research.

9. **Section 130026(a):**

Comment:

"[S]ale of a Home Care Organization" is undefined in these Emergency Regulations.

Proposal: Replace "sale of a Home Care Organization" with the proposed definition of "Change of Control" in #2, above.

Response:

The Department appreciates this comment but is not amending the regulation at this time. This would require additional legal analysis before making such a regulation change; however, the Department may consider it in the future after conducting further research.

10. **Section 130030(c):**

Comment:

If the Department allows electronic records to be maintained, then this Section should clarify that storage of records does not include the ability to access electronic records from a location.

Proposal: "Hard-copy records for clients and Home Care Aides shall not be stored at the suboffice."

Response:

The Department notes that Section 130030(b) as indicated in the comment is cited incorrectly and that the correct section is 130030(c). The Department appreciates this comment but is not amending the regulation at this time. For health and safety reasons, the Department is not allowing the maintenance of electronic records in lieu of hard copy document. Therefore, this regulation does not require the inclusion of the words "hard-copy" since all types of records are precluded from being stored at a suboffice.

11. **Section 130030(b):**

Comment:

It can be difficult for a Home Care Organization to monitor how many hours an office is staffed, especially when multiple staff members use the office. It seems that the requirement that no client or Home Care Aide hard copy records be stored at the office should be sufficient to ensure that the activities of the office are limited.

Proposal: Eliminate Section 130030(d). Alternatively, revise Section 130030(d) to provide, "A suboffice shall not have staff present more than 72 hours in a

seven-day period." Revise Section 130030(d)(1)(H) to remove the reference to "there is no full-time staff working at the suboffice."

Response:

The Department appreciates this comment but is not amending the regulation as suggested. The request to eliminate Section 130030(d) is without basis as this section only addresses what is required to be submitted for a suboffice request, and not the staffing requirements of a suboffice. However, the Department agrees the regulation needs to be amended for clarification and has therefore made the following non-substantive change to Section 130030(b) by removing the term "full-time staff": *A suboffice shall not operate more than 24 hours in a seven-day period.* In addition, the Department agrees with the proposal to amend Section 130030(d)(1)(H) and has made a non-substantive change to this section as well: *How the Home Care Organization will ensure the suboffice is not operating more than 24 hours in a 7-day period and that no records for clients or Home Care Aides are stored at the suboffice.*

12. **Section 130062(a)(1):**

Comment:

It is apparent from this section that the requirement is to provide advance notice to the Department and that no Department approval is required, but it would be helpful to clarify that.

Proposal: Revise Section 130062(a)(1) to provide, "The following shall be reported in writing to the Department within ten (10) working days precedent the occurrence, and no further approval shall be required."

Response:

The Department appreciates this comment but is not amending the regulation at this time. When a Department is required to respond to and/or approve certain documentation that is submitted by HCOs, these requirements are explicitly stated, i.e., 130023 for Initial Application Review and Issuance of Licensee, or Section 130027 for Waivers and Exceptions. If approval or a response is not required by the Department the regulation remains silent. This is consistent across the regulation package. In an attempt to maintain the aforementioned

consistency, the Department is electing not to insert the suggested "no further approval shall be required" language in Section 130062(a).

13. **Section 130062(a)(1):**

Comment:

The requirements of Section 130062(a)(1)(E) should already be covered by the "Association, Transfer and Disassociation" requirements when a Home Care Aide or employee is no longer affiliated with a Home Care Organization. Creating any additional reporting requirement for personnel changes would be a substantial administrative burden on Home Care Organizations. Moreover, it is generally not possible to provide advance notification of such changes.

Proposal: Eliminate Section 130062(a)(1)(E) and have the "Association, Transfer and Disassociation" requirements be the sole means of tracking which Home Care Aides and Employees are associated with a Home Care Organization.

Response:

The Department appreciates this comment and agrees that it should be amended for clarification. The Department notes, however, that this is the only regulation section that specifically addresses a HCO's requirement to notify the Department of the separation of an employee or HCA. Therefore, this section cannot be eliminated as suggested. The Department has made a non-substantive change to remove the word "*preceding*" from Section 130062(a)(1) since it may not be practical or even possible to report all of these occurrences in advance, such as when an employee or HCA will be separating employment from the HCO.

14. **Section 130066(b):**

Comment:

Each of the requirements described in Section 130066(b) should be required as of the date of signature of the Home Care Aide's personnel record form (HCS 501).

Proposal: The date of signature of the Home Care Aide's personnel record should be the date of hire. Any changes to the information listed on the Home Care Aide's status (updated tuberculosis tests, change in driver's license

number, etc.) thereafter should not require an update to the personnel record form.

Response:

The Department appreciates this comment and agrees that the regulation should be amended to clarify that the Personnel Record (HCS 501) form is required to be completed at time of hire and does not need to be updated thereafter. The Department has changed Section 130066(b) to now read: *Each Affiliated Home Care Aide's personnel record shall contain a Personnel Record (HCS 501) form that is completed with accurate information as of the date of hire. The Personnel Record (HCS 501), furnished by the Department, shall contain the following information.*

15. **Section 130066(c)(6):**

Comment:

If a Home Care Aide has evidence of a negative TB test that occurred within the past two years (in accordance with Section 1796.45(d) of the Home Care Services Protection Act), Section 1796.45(a) renders that TB test invalid if it was not done within 90 days before or within 7 days after the date of hire. TB tests can be very expensive for Home Care Aides, on the scale of ~\$30 for a skin test, and ~\$200 for a chest x-ray. Many Home Care Aides make minimum wage salaries. Requiring a Home Care Aide applicant to pay for an additional TB test within two years of their previous TB test simply because the previous TB test was not conducted within the 97-day authorized window is unnecessarily onerous. It is also administratively difficult for a Home Care Organization to ensure that all of its Home Care Aides have valid TB tests within the 97-day window. Sometimes the Home Care Organization itself will pay for the TB testing, which is also a burden.

Proposal: Clarify that negative TB tests that occurred within two years are valid for purposes of compliance with Section 1796.45, regardless of whether they occurred within the 97-day testing window.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The tuberculosis (TB) requirements are controlled by statute and

therefore cannot be modified with these regulations. In addition, Section 130066(c)(6) specifies only that a HCA's personnel record needs to contain TB documentation, and does not pertain to the issues addressed in the comment. Modifications to the TB requirements would require a statutory change.

16. **Section 130066(c)(6):**

**Comment:**

Home Care Aides occasionally will go on a temporary leave of absence (to attend to family matters, emergencies, injuries, etc.), and during that leave period, will fall out of compliance with respect to their tuberculosis screening. At this time, they are not working for a Home Care Organization. This results in an administrative burden on Home Care Organizations that wish to respect the leave of the Home Care Aide but also must ensure compliance of any Affiliated Home Care Aide with respect to tuberculosis screening. The approach taken towards temporary leaves of absence with regards to annual training, as discussed in Section 130067(b), could be a solution to this issue.

Proposal: "(i) When an Affiliated Home Care Aide leaves employment for a period of time, less than a year, and the two-year validity period of their tuberculosis exam expires during the leave, the Affiliated Home Care Aide must undergo a new tuberculosis exam upon return and before presence with clients. During the leave the Affiliated Home Care Aide will not be considered out of compliance for purposes of this Section. (ii) When an Affiliated Home Care Aide leaves employment for one year or longer, the hire date will be considered a new hire date and the tuberculosis exam requirements set forth in Section 130066 shall be based upon the new hire date. During the leave the Affiliated Home Care Aide will not be considered out of compliance for purposes of this Section."

**Response:**

The Department appreciates this comment but is not amending the regulation at this time. The tuberculosis (TB) requirements are controlled by statute and therefore cannot be modified with these regulations.



17. **Section 130067(d)(2):**

Comment:

The HCS 500 Training Log specifies all the relevant information to any Home Care Aide's training. Verification, as explained by Department Representatives via email communication, may include a sign-in sheet signed by the Home Care Aide training attendee, or a certificate made by the training organization specifying the name of the trained Home Care Aide, date of training, description of training, name of instructor(s), type of training, and number of hours trained. All of this information can already be found on the HCS 500 Training log itself (See Section 130067). Any additional verification or documentation to the HCS 500 Training Log is therefore entirely redundant to the HCS 500 Training Log itself and creates an unnecessary administrative burden for the Home Care Organization. Generating paper certificates is an administrative task that takes time to design, print, and file, and doesn't add to the authenticity of a given HCS 500 Training Log.

Proposal: Verification documentation should not be required as an ongoing reporting requirement. Eliminate section.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Signed documentation is proof that training was completed and certified true by the trainer. The training log and the written documentation are two different things, and therefore the requirement to have written documentation cannot be eliminated. The training log is similar to a table of contents or quick reference to the HCA's overall training, whereas the written documentation is proof that the training occurred and is an attachment to the training log.

18. **Section 130081(c):**

Comment:

Home Care Aides may move to new residences and therefore frequently do not receive notices from the Department. Home Care Aides likely do not change their email address often or at all.

Proposal: Require online Home Care Aide applications to include the email address of the Home Care Aide applicant for all future communications. This will enable the Department to notice Home Care Aides even if they have changed

residences, and will alleviate the burden on Home Care Organizations to figure out whether any particular Home Care Aide has received a Department notice for renewal/exemption/exemption transfer/forfeiture, etc. or not.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department needs current addresses for legal service of process. For legal purposes, the Department needs a physical address with which to contact the HCA.

**E. Comments from LivHOME, Inc.**

1. **Section 130009:**

Comment:

Limits the transferability of licenses for corporations. This will really make finding new investors more difficult in the future. There should be some allowance for the transfer of licenses between corporations. Obviously some request or information would be needed, but they should be transferable.

Response:

The Department appreciates this comment but is not amending the regulation at this time. If a HCO undergoes a change in ownership, the new owner must comply with the requirements as set forth in Section 130022.

2. **Section 130052:**

Comment:

Provides for civil penalties. That's fine, but there's normally an upper limit to what those penalties could be. There's not in this case. I think they should place some upper limit (no matter how high that is) on the amount of civil penalties allowable.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The California Legislature, in Health and Safety Code section 1796.55 (c), determined when the amount of the civil penalty fine and when the fine would end. Section 1796.55 (c) states, "The department may impose a fine of up to nine hundred dollars (\$900) per violation per day commencing on the date the violation was identified and ending on the date each violation is corrected." Here,

the discretion of the Department is limited to whether to issue the fine. If the Department issues a civil penalty fine, the Legislature requires that the fine continue until "the date each violation is corrected." The Department does not have the legal authority to change in regulations the amount of the civil penalty (\$900 per violation per day) or the time frame for which the fine must continue. Any such changes must be made via a statutory change that is approved by the Legislature.

## **F. Comments from American Board of Home Care (ABHC)**

### **1. Section 130006:**

#### Comment:

Can we please ask the State for TIME FRAMES on when these investigations will take place? Can we ask the State to investigate claims within 90 days or 120 days? Is that possible? In addition - how will the state be able to determine that unlicensed services are being arranged without an onsite visit to the organization in question? This puts the consumer in direct risk of being provided care through an unlicensed and unregulated HCO. This should be the departments #1 focus - to protect the public from organizations who are operating outside the law.

#### Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department will field investigations on a case-by-case basis; however, Section 130058(c) requires the Department to initiate a complaint investigation within ten (10) days of receiving the complaint. Each complaint requires a "fact-specific" inquiry, and therefore the length of the investigation will vary on a case-by-case basis. The state will use its expertise to determine if a site visit is needed. If it is determined that a HCO is operating without a license, the Department will serve a Notice of Operation in Violation of Law in accordance with Section 130006(b) and issue civil penalties pursuant to Section 130054. The Department will also notify the Attorney General's Office of the unlicensed operation and will make a site visit to the HCO within five (5) days of serving the Notice of Operation in Violation of Law to verify the unlicensed operation has ceased.

### **2. Section 130009:**

#### Comment:

This provision of the law allows the deficiencies and citations of a certain HCO to die with the transfer of that business to a new owner/operator. This does not

protect the public. If ABC, LLC company dba ABC Home Care sells to a new "owner" (could be ABC, LLC's brother or spouse) and ABC, LLC has a troubled history, multiple deficiencies, etc. then, according to the regs, these deficiencies do not transfer and therefore the public would never know that ABC Home Care 1) has been sold/transferred and 2) that ABC Home Care had any deficiencies. This is a potential loophole for bad operators to close their legal business and open another. How can this be worked to ensure bad legal entities and bad operators stay out of the business. Furthermore, for those good operators who have built a good reputation with no deficiencies - that is valuable to the public. How can we ensure that the good will of a business that has been built by good operators can be recognized and transferred in the event of a sale?

Response:

The Department appreciates this comment but is not amending the regulation at this time. Although prior deficiencies and citations do not transfer, the prior information may be used for future determinations, such as whether or not to grant a new HCO license. In addition, unpaid citations may also be used to prevent an applicant from getting licensed. The Department notes that it cannot regulate "good will" or "public perception."

3. **Section 130050(d)(4)(D):**

Comment:

Section (4)(D) Timing issue needs to be addressed according to the civil penalties or replace "Shall" with "May" in section 4d.

24 hours to correct a deficiency is nearly impossible to comply with, especially if the deficiency has to do with the TB test or if additional documentation is required from a Registered Home Care Aide. To request documentation from an employee and expect a 24-hour turn around time is not enough. There are multiple parties that are most likely involved. I would say 72 hours would be sufficient to allow the HCO to contact the HCA and then allow the HCA to contact their physician for medical records/copies. The penalty is \$100 per day that the deficiency exists; therefore, the HCO could be waiting several days while the HCA gets docs back to the HCO. Not enough time given to all parties, especially when the HCO is the only party penalized.

Response:

The Department appreciates this comment but is not amending the regulation at this time. The Department is mandated by Sections 1796.43(a)(2) and 1796.45

of the Health and Safety Code to require that Home Care Aides demonstrate they are free of active tuberculosis (TB) disease before they may have contact with clients or potential clients. The Department considers this a health and safety issue. A Home Care Organization is considered in compliance and will not be cited if they immediately remove a Home Care Aide's access to clients or potential clients if a Home Care Aide's TB clearance is no longer current within the requirements of the statute.

4. **Criminal Record Clearance and Criminal Record Exemption Timeframes:**

Comment:

Furthermore, if additional documentation is needed for a Criminal Record Clearance or Criminal Record Exemption from the state, there is no time frame stated in the statute on how long it takes the department to issue Criminal Record clearance or criminal record exemption documents as set forth in subdivision (d) of section 13100 and subdivisions (c), (e) and (g) of section 130066. The State should include time frames on how long it has to respond to HCO's and HCA's when requesting documentation pertaining to the aforementioned sections.

Response:

The Department appreciates this comment but is not amending the regulation at this time. Criminal record clearances are dependent on the Department receiving a cleared background response from the California Department of Justice. Criminal record exemption timeframes are determined on a case-by-case basis, depending on the specific facts and circumstances regarding each individual's criminal history. Collecting documentation from other agencies (i.e. court records and arrest reports) also affects processing times. Therefore, specific timeframes cannot be given as each circumstance is different.

5. **Section 130071:**

Comment:

Section 2(b) is of concern: It states: *(2) A registration status displaying "registered" on the Home Care Aide Registry is displayed when one of the following occurs:*

*(A) A Home Care Aide applicant has received a criminal record clearance.*

*(B) The Department has received a subsequent notice of non-violent conviction for a Registered Home Care Aide, and the Department has determined that the person shall be allowed to remain on the Home Care Aide Registry until a decision on a criminal record exemption is rendered. 1. The Home Care Aide's*

*registration status will remain registered until final action of the criminal record exemption process.*

How long will the State take to review if a Home Care Aide needs a Criminal record exemption is needed? 15 days? 45 days? Could a Home Care Aide have a non-violent conviction (theft, fraud, robbery, embezzlement...etc.) and still be allowed to work with new HCO's that associate the HCA? What is the time frame the State has to make a determination when an exemption is needed?

Recommendation: I recommend that, in order to protect the consumer, these non-violent convictions would immediately change the registration status of an HCA to "Pending" as defined in Section 130071 (a)(1)(A). All affiliated HCO's shall be notified in writing of the change from "Registered" to "Pending" while the State determines if an Exemption is needed. Once a determination is made, the status either reverts back to "Registered" or remains "Pending".

Response:

The Department appreciates this comment but is not amending the regulation at this time. If a registered HCA receives a subsequent non-violent conviction, the HCA would not be able to transfer to another HCO or begin providing home care services for another HCO until/unless the Department has approved the HCA's exemption and exemption transfer to the new HCO. The new HCO is required to receive exemption approval prior to the HCA having contact with clients. In addition, the Department cannot change an individual's registration status from registered to pending as there are specified protections and due process rights that the excluded individual is afforded.